

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
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3 JOHN E. ANDRUS MEMORIAL, INC.,  
4 doing business as Andrus  
on Hudson,

5 Plaintiff,

6 v.

07 Civ. 3432 (CLB) (MDF)

7 RICHARD F. DAINES, as  
8 Commissioner of the New York  
State Department of Health,

9 Defendant.

10 -----x  
11 White Plains, N.Y.  
12 June 25, 2008

13 Before:

14 THE HONORABLE MARK D. FOX,

15 Magistrate Judge

16 APPEARANCES

17 CADWALADER WICKERSHAM & TAFT, LLP  
18 Attorneys for Plaintiff  
19 BRIAN THOMAS McGOVERN  
PETER G. BERGMANN  
ARIEL V. GORDON

20 OFFICE OF NEW YORK STATE ATTORNEY GENERAL  
21 Attorneys for Defendant  
JOHN PETER GASIOR  
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22  
23  
24 Proceedings recorded by  
25 electronic sound recording.

1 home to comply with all state, federal and local rules and  
2 regulations.

3 Q So even if it's a viable requirement under the New York  
4 State Department of Health regulations, federal surveyors can  
5 enforce that against the nursing home?

6 A They can.

7 Q Would that include the requirements we discussed earlier  
8 about posting an operating certificate and notifying of any  
9 amendments.

10 A It could.

11 Q And you've had decades of experience in quality management  
12 of nursing homes; is that fair to say?

13 A That's fair to say.

14 Q I won't quantify the years.

15 A My hair was brown.

16 Q But based on your experience, do you have an opinion about  
17 the consequences to a nursing home's operations of telling  
18 their residents, family members and physicians that the  
19 Department of Health has issued an amended operating  
20 certificate with a termination date of June 30, 2008?

21 A I have an opinion, yes.

22 Q And what is your opinion?

23 A My opinion is that to tell residents and families who call  
24 that nursing facility their home that the operating  
25 certificate, literally the thing that allows that nursing home

1 to operate in New York State, would be limited or eliminated  
2 would be incredibly, incredibly distressing to those residents,  
3 and certainly to the families and loved ones, people who are  
4 community supports to residents who live in the nursing home,  
5 even if they're not family.

6 Q And besides telling residents and family, are there others  
7 who have to be notified when an operating certificate is  
8 amended?

9 A Yes.

10 Q Who else is supposed to be notified of the Department of  
11 Health regulations?

12 A Physicians need to be notified, as well.

13 Q And based on your experience, do you have an opinion as to  
14 the consequence of a nursing home telling physicians that a  
15 nursing home has been issued an amended operating certificate  
16 with a termination date of June 30th, 2008?

17 A In my opinion, it certainly could impact on a nursing  
18 facility related to referral sources, physicians who would send  
19 their patients to that nursing facility. The possibility of  
20 uprooting folks more than once is really not something that  
21 anyone would be interested in doing, not a physician, not a  
22 family member, not anybody.

23 Q And can the Department of Health tell a nursing facility  
24 that it doesn't have to comply with the requirements to which  
25 you testified concerning the posting of an operating